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*Administrative Responsibility for Algorithmic Administration: Doubts and Paradoxes**

Federico Capizzoto
(PhD Student, University of Pisa)

Valentina Giomi
(Associate Professor of Administrative Law, University of Pisa)

Vanessa Manzetti
(Associate Professor of Administrative Law, University of Pisa)

ABSTRACT The progressive computerization of administrative decision-making has enhanced the efficiency and speed of public action while generating new forms of administrative liability. As administrative activity becomes increasingly supported by technological systems, the legislator faces a paradox: the reduction of human intervention in administrative tasks has been accompanied by an expansion of public officials' exposure to liability. The 2026 reform addresses administrative liability for damage to public finances by limiting liability to cases of gross negligence, strengthening ex ante legality review, and introducing a new advisory function. However, the relaxation of the traditional liability framework has reduced the level of protection afforded to public resources while simultaneously increasing public officials' concerns about the risks associated with the computerization of administrative activity. As a result, the reform may produce effects that undermine its own objectives. The paper argues that bridging technological innovation and legality requires bilateral and multidisciplinary training involving both public officials and model developers in order to rebalance the relationship between administrative liability and the administration's decision-making capacity.

KEYWORDS: Artificial Intelligence - Algorithmic Administration - Public Administration - Administrative Responsibility - Court of Auditors - Financial Liability - Defensive Bureaucracy

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1. *Artificial Intelligence in Public Administration: A Multifaceted Ecosystem*

The purpose of this brief introduction is to highlight the complexity underlying the ecosystem of Artificial Intelligence (AI) in service to Public Administration (PA), offering a basis for reflection on the need for adequate training for public employees, who are increasingly required to interact with these sophisticated systems. It is important to note that, in the ecosystem of automation, realities with profoundly different meanings coexist, often grouped together, in common parlance, under the broad label of AI.

At an operational level, the general definition of AI system is contained in art. 3 n.1 of the AI Act, according to which '"AI system" means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments'.[1]

As the definition clearly illustrates, an AI system is a broad container in which various

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[1] Regulation (EU) 2024/1689 (AI Act), Art. 3.

realities cohabit.

First, it includes technologies based on traditional Machine Learning (ML), such as Supervised Learning, Unsupervised Learning and Reinforcement Learning, used to automate analytical and decision-making processes based on structured data.

Equally significant – and rapidly expanding – are applications leveraging Generative AI, particularly in contexts involving automatic text production and natural language interaction.

From an operational perspective, the project initiatives emerging from the survey conducted by AgID[2] primarily focus on natural language analysis and processing (Natural Language Processing – NLP). The resulting solutions enable the classification of textual material, as well as the automatic generation of responses, through natural language interactions, both written and spoken.

More than 60% of the projects considered rely on AI capabilities through the use of chatbots and virtual assistants. Further applications include decision-support systems, that, through AI techniques, analyse complex data and propose optimal solutions, in order to improve decision-making processes. At present, applications involving intelligent robotics – systems that can interact with the physical environment, acquiring information from experience and performing tasks autonomously, with integrated decision-making capabilities – are less widespread.[3]

In view of what has emerged, there is a growing need for public employees to acquire a background that is not only strictly legal and economic, but also technical,[4] given the responsibilities they face in employing these new technologies.

Strengthening internal technical skills to use and understand AI will be crucial: it is now widely acknowledged that, without a solid and sustained development of internal STEM expertise, the effectiveness of the PA's digital transition risks depending excessively on external consultancy and short-term initiatives. In this regard, it is worth noting – without addressing the issue in detail here – that the role of the Digital Transition Manager (RTD) will become extremely important in the post-PNRR period: this will require real skills, Digital Transition Offices (UTD) structured even in associated forms and policies aligned with data from the Ministry of Universities and Research (MUR).[5] Indeed, this underscores the necessity of training supervisory roles capable of bridging the gap between the institutional legal requirements of public administration and the technical domain of algorithmic models.

Overall, PAs should invest in training their staff to ensure that public employees are able to understand, use and manage these new technologies responsibly. This requires the provision of training programmes covering AI principles, machine learning algorithms and the multifaceted application of these tools across various public administration domains. Furthermore, training should be tailored to employees' qualification level and specific professional profile.[6]

However, it is necessary to take into account that the use of information technologies within administrative activity may give rise to critical issues where the choice of software is not functional to the concrete pursuit of the public interest, thus leading to the production of incongruous or misleading outcomes.[7] It is therefore necessary for developers of artificial intelligence systems to acquire solid knowledge of administrative law,[8] so that, in designing the model, they take into account the principles governing administrative action, with a view to fostering effective collaboration with the public employee who will ultimately be required to use the system.[9]

This entails considering a form of bilateral, multidisciplinary training involving both the

[2] The survey was conducted with the technical and scientific support of the Digital Observatory of the Polytechnic University of Milan.

[3] AGID - Agenzia per l'Italia Digitale, *L'intelligenza Artificiale nella Pubblica Amministrazione - Rapporto 2025: Ricognizione delle PA centrali*, 7.

[4] To be understood as STEM skills.

[5] R. Crinò and A. Tironi, *RTD senza competenze STEM: il tallone d'Achille della PA digitale,* in *Agenda Digitale*, 2025.

[6] M. Petrocelli, L. Rinaldi and A. Rollin, *Rischi e opportunità per la Pa nell'era dell'intelligenza artificiale*, in *Rivista di Public Management*, no. 1, 2023, 25.

[7] V. Neri, *AI Act e diritto amministrativo*, in *LavoroDirittiEuropa Rivista nuova di Diritto del Lavoro*, no. 1, 2025, 15.

[8] H. Felzmann, E. Fosch Villaronga, C. Lutz and A. Tamò-Larrieux, *Towards Transparency by Design for Artificial Intelligence*, in *Science and Engineering Ethics*, 2020, 3333.

[9] M.Hildebrandt, *Law for Computer Scientist and Other Folk*, Oxford, Oxford University Press, 2020, xi.

public employee and the developer of the model. In this way, it is also possible to further alleviate the position of the public official, who can rely on systems structured according to legal logics and principles.

Lastly, it may be stated that the development and application of AI tools inherently require multidisciplinary and cross-cutting skills, as professionals are increasingly called upon to possess diverse competences and to engage in effective dialogue and interaction with one another.[10]

2. *Computerized Administrative Decisions, Multiplication and Differentiation of Public Responsibilities and Loosening of Administrative Responsibilities: Delicate Balancing Acts*

The introduction of computerized decision-making systems and algorithmic models into the daily operations of public administrations[11] must be measured against the current legal system of administrative responsibility, intended to remedy damages caused to the administration to which they belong, or to another public administration, by employees and public officials linked to the administrative structure by a service relationship.[12]

The progressive and growing computerization of administrative decisions has speeded up and streamlined public tasks, but it has also generated new and different types of administrative liability. These new forms of responsibility, although not always accurately identified and regulated by the legislator, directly affect public employees, despite the absence of legislative provisions configuring a particular model of public responsibility specifically reserved for the financial violation generated by the algorithmic work of public employees.[13]

Consequently, the new forms of administrative responsibility developing from the increase in computerized public processes, lacking *ad hoc* regulation, fall under the general regulatory regime provided for administrative-accounting responsibility.

The lack of a specific type of administrative responsibility built exclusively for algorithmic public decisions involves an analogical extension to the latter of the underlying logic of the general administrative responsibility system, which was specifically designed by the legal system to protect public economic and financial resources and to ensure the prudent and correct management of the public resources of the administered community.

It is therefore necessary to verify how and with what effects the general model of responsibility currently provided by the national legal system can be applied or adapted to the financial damages caused by the employee as a result of this new decision-making system.[14]

The general system of administrative responsibility envisaged in the national context revolves around the constitutional principle of protecting public finances from damages resulting from inappropriate use produced by employees and officials who, with malice or gross negligence, have caused prejudice to the finances administered in favor of the community.

The ultimate goal is to protect the exchequer and to remedy the incorrect use of public resources by employees or officials who have used public money in a manner not consistent with its purpose, generating negative consequences for the administration to which they belong or for another administration.

The model chosen by our legal system to react to the responsibility for an accounting violation is compensatory-restorative and is

[10] H. Felzmann, E. Fosch Villaronga, C. Lutz and A. Tamò-Larrieux, *Towards Transparency by Design for Artificial Intelligence,* cit., 3333.

[11] See recently M. Macchia (ed.), *Il presente dell'amministrazione algoritmica. Una ricerca sul campo*, Turin, Giappichelli, 2026; F. Gigliotti and M.L. Chiarella, *Procedimento algoritmico e determinazione amministrativa*, Naples, Edizioni Scientifiche Italiane, 2024.

[12] With regard to administrative and accounting liability and the role of the Corte dei conti, V. Tenore (ed.), *La nuova Corte dei conti: responsabilità, pensioni, controlli*, Milan, Giuffrè, 2022; in particular, on the function of accounting judge F.G. Scoca, *Sguardo d'insieme sugli aspetti sostanziali e processuali della responsabilità amministrativa*, in F.G. Scoca (ed.), *La responsabilità amministrativa e il suo processo*, Padua, CEDAM, 1997, 7.

[13] See on this matter S. Cimini, *La responsabilità civile e amministrativa di fronte alle sfide dell'intelligenza artificiale*, in *Ceridap*, January 2026.

[14] For a general overview of the framework and principles of algorithmic administration, see E. Carloni, *Dalla legalità algoritmica alla legalità (dell'amministrazione) artificiale. Premesse ad uno studio*, in *Rivista italiana di informatica e diritto*, no. 2, 2024; E. Belisario and G. Cassano (eds.), *Intelligenza artificiale per la pubblica amministrazione*, Pisa, Pacini Giuridica, 2024.

based on a liability action whose activation is entrusted to a public investigative body (Accounting Prosecutor's Office) and whose core revolves around the subjective profile of attributing the damage caused to the public structure by the employee linked by a public service relationship.[15]

The function of the administrative liability action is exclusively public: for this reason, the legal model chosen is not configured as sanctioning and punitive, but predominantly as compensatory.

For this reason, the liability action is entrusted to a public body, the accounting public prosecutor, who conducts investigations based on precise and detailed reports of financial damage; any potential jurisdictional phase is entrusted to a special administrative judge–the Court of Auditors– which has the task of ascertaining the elements of the liability case, the paradigm of which is partly different from the civil one.

The liability model designed for damages resulting from malicious or grossly negligent actions, carried out by public employees in the exercise of their functions, is centered on the intensity of the mental element of the agent's conduct and on the possibility that the accounting judge may reduce the damages claimed against the responsible party.

The limitation of the imputation nexus of responsibility only to conducts (active or passive) carried out with gross negligence or malice represents the right balance between the protection of financial needs and the regular performance of administrative activities.

The aim is to avoid a system that hinders the work of public administration employees or officials, without retreating in the guarantees of protecting collective resources.

Furthermore, precisely to prevent the liability mechanism from turning into an element of paralysis of the administration's action or engendering fear in the performance of daily public functions, the legislator has made strictly defined and minimized the hypotheses of administrative responsibility with a sanctioning character, providing for recourse to the punitive model only in some typical cases. Despite regulatory efforts aimed at minimizing the risk of developing a defensive bureaucracy out of fear that administrative actions may result in public liability hypotheses pursuable by the Accounting Prosecutor's Office, in recent years, administrative action has suffered severe slowdowns that have sometimes compromised its regular functioning.

The existence and operating method of the administrative liability mechanism have prompted employees and officials to follow forms of operational caution which, paradoxically, have become even greater in the case of using computerized systems or algorithmic administrative decisions.

Computerized decision-making systems only apparently exempt the public operator from responsibility: in reality, they oblige the latter to control and verify the regularity of decision-making processes that are not always conducted in a transparent, understandable, and accessible manner.

The fear of incurring forms of public responsibility has grown proportionally to the expansion of operations conducted with the aid of IT tools and computerized techniques supporting decisions.[16]

The poor technical preparation of administrative staff, the opacity of the decision-making processes by which systems process data to be used in decisions, the uncertainty of the degree of culpability required of each public operator in the context of an ordinary administrative operation using non-legal elements, have led to a progressive caution that can compromise the regular functioning of many administrations.

Behind a strong and generalized push to resort to IT tools and techniques in public administration lies the multiplication and differentiation of the hypotheses of financial violations giving rise to administrative responsibility.

These, if on the one hand they risk burdening daily public work, on the other hand cannot be exempted from the possible scrutiny of the accounting judge.

The legislator has therefore found itself managing a paradox deriving from the increase in the responsibility of public employees as a consequence of the decrease in activities to be carried out, with the same

[15] On the protection of public funds, M. Smiroldo, *Le tecniche di protezione delle risorse patrimoniali erariali*, in A. Canale (ed.), *La Corte dei conti. Responsabilità, contabilità, controllo*, Milan, Giuffrè, 2019, 30.

[16] For a recent critical analysis, E. Carloni, *Critica dell'amministrazione artificiale*, Bologna, Il Mulino, 2026.

public functions to be fulfilled.

Faced with an administrative activity increasingly supported and integrated by non-human technical elements, in which public responsibilities increase and articulate, if there is no specific regulation for the new forms of responsibility that can arise from computerized actions, the fear for public employees and officials of making errors that can be reviewed by the accounting judge increases.

Providing specific rules for the responsibilities deriving from algorithmic administrative work would have helped to manage many critical issues arising from the described paradox and perhaps would have eased the fear of making mistakes.

But to date, the legislator has not provided a special discipline for such new responsibilities connected to financial violations arising from algorithmic administration.

The financial violations that lead to these new hypotheses of responsibility therefore fall within the old general model of administrative responsibility provided for all strictly human administrative activities.

If the accountability regime remains unchanged and identical for all types of activities conducted by the administration, even computerized ones, the decrease in human administrative activities required of employees and officials corresponds to an increase in the fear of heightening one's own public responsibilities deriving from committed accounting violations.

The worsening of the perception of risk increases the fear of acting and slows down the performance of daily administrative activities, including those subject to acceleration because they are involved in the decision-making computerization process: the second paradox thus grafts onto the first paradox. Faced with this picture, the legislator has chosen to intervene by focusing on some key aspects of the current responsibility system, which it has modified with the aim of reassuring the daily work of public administrators by preventing the phenomenon of defensive administration.

It deemed it appropriate to intercept those elements that burdened the operational mechanism of administrative responsibility and carried out a revision of its objective scope.

In this way, it achieved a reduction in the space and operational methods of the general model of imputing administrative responsibility.

The path taken aims to preserve the growing push towards the computerization of decision-making processes that make public administration efficient and modern and, at the same time, to avert the fear of an excess of responsibility.

The lightening of the current system of financial liability unfolds in different directions and is achieved through provisions that have differentiated objects.

The difference in object, however, responds to a unitary design and makes the new rules complementary to each other.

3. *The New Paradigm of Administrative Responsibility: From the Reform of the Mental Element of the Accounting Violation to the Reduction of the Damages Claimed*

With Law no. 1 of 7 January 2026, the national legislator intervenes on the mechanism of administrative liability for public financial damage by introducing elements of strong novelty to the previous paradigm of operation of the assessment judgment of the financial violations before the Court of Auditors.

It should be remembered that the 2026 reform had been preceded, in 2020, by recent temporary and transitional legislative interventions that had reduced the scope of administrative accountability by lowering the degree of culpability required for financial damages caused by the conduct of public employees.[17]

In order to solve the problem of the risk associated with administrative action,[18] the legislator, with a highly debated operation,[19]

[17] Art. 21(2) of Decree-Law No. 76 of 16 July 2020 (Misure urgenti per la semplificazione e l'innovazione digitale), converted into Law No. 120 of 11 September 2020: the administrative liability of public officials is limited to intentional acts of commission (legislation in force until 31 December 2024).

[18] V. Tenore, *La "paura della firma" e "la fatica dell'amministrare" tra mito e realtà: categorie reali o mera giustificazione per l'impunità normativa degli amministratori pubblici? dalla "Corte dei conti" alla "Corte degli sconti"*, in *Rivista della Corte conti*, no. 1, 2025, 1.

[19] For a few critical analyses M.T. Polito, *La Riforma della Corte dei conti. Si smantellano le funzioni per valorizzare l'esimente relativa alla responsabilità erariale a danno dei cittadini*, in *Giustizia Insieme*, 7 April 2025; A. Ciaramella, *La sopravvivenza normativa*

had decided to limit the mental element required for administrative responsibility to malicious and omissive negligent conduct.

Active negligent conduct would not have integrated the subjective basis for configuring the compensable violations.

In this way, for a period limited to one year, but then extended several times, the compensable financial loss could have triggered a judgment of administrative liability only if the employee had acted with malice or gross omissive negligence.

Harmful events committed with active gross negligence were not capable of integrating the element required for jurisdictional accountability.[20]

In the wake of this massive revision comes the 2026 reform, which stabilizes and completes the path started in 2020 by strengthening the objective of making the activities of public administrations more dynamic and fluid through the relaxation of accountability rules.

The new rules, by explicit will of the legislator, come into force immediately and also apply to pending disputes and those already decided but not yet published.

The law is articulated and complex and does not intervene solely on the aspects that directly and specifically affect the functioning of the administrative liability imputation system in the context of accounting judgments.

It sets itself the broader and more ambitious goal of reforming many elements that make up the old regulatory framework governing the accounting judgment.

As far as this analysis is concerned, the most striking novelties concern the revision of the mental element of imputability and the reduction of the compensable quantum.

With the first modification, the legislator intervened on the paradigm of administrative responsibility by restricting the condition of culpability to hypotheses of gross negligence as specified by law.

The typification of the negligent violation capable of triggering the imputability of the financial violation to the public employee has standardized the punishable conducts and has reduced the scope of responsibility.

The legislator has provided for precise conditions of exclusion or lightening of culpable conduct, restricting the sphere of accounting punishability to cases where there are no legal and factual conditions or circumstances that absorb the liability of the public employee.

The employee's culpability is excluded if the legal rules violated are not clear and precise or if the violation is excusable or not particularly serious; an employee is not culpable who, in their work, has followed prevailing jurisprudential guidelines or opinions of competent authorities.

Gross negligence, therefore, remains confined to cases in which there is a manifest violation of the applicable legal rules, the misrepresentation of the fact, the affirmation of a legally certain fact, or the denial of a legally existing fact.

The new method of delimiting the mental element provided by the law constitutes a central aspect of the reform because the paradigm of administrative responsibility is based on the subjective title of culpability.

In particular, in assessing the financial loss, the mental element represents the balance point between the reasons for protecting the public purse and administrative efficiency: for this reason, the legislator wanted to structure administrative responsibility in a peculiar way compared to the common civil paradigm.

The sphere of culpability, already reduced to the existence of malice or gross negligence, has been further reduced.

The concept of fault, already understood in a very generalist manner (macroscopic violation of service duties, characterized by inexcusable negligence or total contempt for

della colpa grave nella responsabilità erariale, in *dirittoeconti.it*, 24 June 2020; S. Cimini and F. Valentini, *La dubbia efficacia dello "scudo era-riale" come strumento di tutela del buon andamento della pubblica amministrazione*, in *ambientediritto.it*, no. 1, 2022, 204; M. Pecchioli, *Quando il rimedio è peggiore del male: il d.l. n. 76/2020 e l'inefficace lotta alla "paura della firma". Individuare le cause per ripensare le soluzioni, in pubblica amministrazione*, in *P.A persona e amministrazione*, no. 1, 2022, 645 ff.; M. Perin, *Le modifiche (o soppressione) della responsabilità amministrativa per colpa grave. Saranno utili? Probabilmente no*, in *lexitalia.it*, 25 August 2020; L. Torchia, *La responsabilità amministrativa*, in *Giornale di diritto amministrativo*, no. 6, 2020, 763; G. Colombini, *I decreti semplificazione e rilancio alla luce dei principi generali di contabilità pubblica, ovvero dei falsari di parole*, in *Federalismi,* no. 8, 2021; A. Giordano, *La responsabilità amministrativa tra legge e necessità. Note sull'art. 21 d.l. n. 76/2020*, in *Rivista della Corte dei conti*, no. 1, 2021.

[20] See E. Amante, *L'elemento soggettivo della responsabilità amministrativa nella prospettiva delle scienze comportamentali*, in *Rivista della Corte dei conti,* no. 3, 2022, 36–46.

the rules) and flexible (as a consequence of many factual or legal circumstances, culpability was reduced, shifted to other legal subjects, or excluded), today becomes even more circumscribed.

However, the amendment does not resolve the critical issues related to the fear of incurring new hypotheses of liability that could arise as a consequence of the use of IT techniques supporting public decisions; the problems emerging from the computerization of administrative activities do not have a legal origin, but they create legal problems.

The legal solution cannot be standard, but it is necessary to build special remedies that intercept the new hypotheses of liability for public financial damage arising strictly in connection with the use of IT techniques in administrative activities.

The legislative conditions that today render the fault not severe do not alleviate the fear of committing a financial violation by employees and officials who use algorithms underlying the administrative decision or who rely on IT techniques to acquire the data necessary for drafting the administrative provision.

Perhaps more useful to avert the risk associated with administrative action is the rule that introduces the obligation for the accounting judge to reduce the *quantum debeatur* in the damages claimed for financial liability.

The possibility of reducing the damages claimed was already a rule in force in the previous regulatory context, but now it is strengthened, specified, and made mandatory. The new rule requiring the judge to limit the economic requests to the public employee operates in a double direction: in the presence of a financial loss ascertained in a jurisdictional setting, the accounting judge must keep the amount requested from the public employee by way of compensation within precise parameters defined by law.

The first parameter is calculated as a percentage of the total amount of the financial prejudice caused; the second parameter serves to further contain the compensable sum within a ceiling that operates when the amount resulting from the first reduction is higher than the values indicated in the reference ceiling.

In this way, the imputable sum is recalculated on unitary and already formalized tabular values, which constitute the maximum limit that cannot be exceeded. It is obvious that the rule, although not directly concerning the areas where algorithmic administration cases are most frequent, indirectly affects the types of responsibility that can arise from it.

In this way, the purpose of the rule seems to be achieved even in the presence of administrative methods other than legal ones.

4. *The 2026 Reform and AI*

4.1. *Evolutionary Profiles of the Exemptions from Administrative Liability for Gross Negligence*

An interesting aspect to investigate is how the recent Foti reform represents the start of a new phase for administrative liability for all those individuals in a service or employment relationship who cause damage to public resources consequent to the use of Artificial Intelligence. Hypotheses that seem to be increasingly concrete in the era of the so-called Digital State and its transition towards a true Artificial State, also due to the significant changes that have affected the law on administrative procedure, which in art. 3 bis 'Uso della telematica' provides that 'To achieve greater efficiency in their activities, public administrations *act using IT and telematic tools*, in internal relations, between different administrations and between these and private individuals'. That is to say, a formulation that, compared to the previous text, introduced a 'digital duty' for public administrations in order to give effect to that transformation sanctioned first at the European level, in the Recovery and Resilience Facility,[21] and then at the national level in the PNRR.[22]

In fact, it is within this framework that Legislative Decree No. 76 of 16 July 2020, converted with amendments by Law No. 120 of September 11, 2020, moved, which in art. 12, paragraph 1, letter b), established that in Article 3-bis, the words 'encourage the use of telematics' are replaced by the following: 'act

[21] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021, establishing the Recovery and Resilience Facility, recital 26, provides that the measures supported by the Facility and included in the recovery and resilience plans of individual Member States should allocate to digital expenditure an amount representing at least 20% of the allocation of each national plan.

[22] It should be noted that Mission 1 of the Italian Plan, 'Digitalization, Innovation, Competitiveness, Culture, and Tourism,' is specifically dedicated to the digitalization of the system and to the promotion of computational and artificial intelligence solutions.

using IT and telematic tools'.

A general rule that found further reinforcement in additional legislative provisions, primarily the new structure of the Public Contracts Code, Part II of which, 'Della digitalizzazione del ciclo di vita dei contratti' in compliance with the principles and provisions of the digital administration code, expressly mandates the use of automated procedures in the life cycle of public contracts.

Specifically, 'to improve efficiency, contracting authorities and granting entities shall, where possible, automate their activities by resorting to technological solutions, including artificial intelligence and distributed ledger technologies'.[23]

Which means a generalized process of digitization and computerization of administrative procedures ordered by law, from which follows - inevitably - the occurrence of damages generated by the use of artificial intelligence by subjects linked to the P.A. by a service relationship.

In particular, it seems possible to configure hypotheses of administrative responsibility where serious negligence occurs in the intra-procedural phases preceding the automated administrative decision, including the selection and approval of the software, where human intervention is relevant, and which moreover in this area cannot act in violation of both internal and supranational norms.

It follows that in such hypotheses, the occurrence of damages attributable to gross negligence or malice should give rise to hypotheses of administrative responsibility. However, the conditional verb form is mandatory also considering the many hypotheses of exclusion of gross negligence provided for by the Foti Reform, above all due to the strengthening of preventive legality controls on acts and the new consultative function.

4.2. *Preventive Control of Legitimacy, Administrative Responsibility and AI*

Rereading the recent Foti reform in the broad process of reorganizing administrative action, characterized by an increasing use of digital and intelligence tools, also offers the opportunity for renewed reflection on the public control system and, in particular, on the role attributed to the preventive control of legitimacy. In fact, the Foti reform seems to selectively enhance a particular control function, namely that of the preventive control of legitimacy, giving it a position of pre-eminence to the detriment of other forms of control, which still hold equal systematic dignity and maintain a non-negligible relevance within the broader framework of the constitutional principles of good performance and sound management of public resources.

It follows that the choice to strengthen the function of preventive control appears anything but neutral, as it significantly affects the overall architecture of the public control system, altering the balance between the different types of verification, attributing a predominant role to the formal *ex ante* verification of acts, rather than the substantial evaluation of administrative results and performance.

According to an approach that places itself in obvious discontinuity with the reform of the nineties, when the process of valuing control models more oriented towards evaluating the results of administrative activity began, such as management control, aimed at scrutinizing not only the regularity of the action, but above all the effectiveness and efficiency of public management. This had brought new spaces for management control in opposition to a preventive control limited to a *numerus clausus* of acts and with an eminently formal function, limited to the legality review of the single measure before its effectiveness.[24]

Added to this, and this is the most painful point in the writer's opinion, is that in parallel with the extension of the preventive control of legitimacy, the Reform also foresees with it a broad kind of exempting efficacy from financial responsibility upon the expiration of the term, also involving the exemption from responsibility with reference to preparatory acts.[25]

The strengthening of the preventive control of legitimacy, as outlined by the Foti reform,

[23] Art. 30, para. 1, Legislative Decree No. 36 of 2023.

[24] See for further discussion on strengthening the preventive control of legality S. Foà, *La riforma della Corte dei conti e della responsabilità amministrativa. Profili critici: un giudice chiamato a co-amministrare?*, in *Federalismi*, no. 5, 2026, 64.

[25] According to the wording of Art. 1, para. 1.2, of the Foti Law, which, in amending Art. 1 of Law No. 20/1994, replaced the words 'limited to the aspects considered in the exercise of control' with 'or by the acts referred to and attached that constitute the logical and legal basis of the act subject to control,' with all the consequences that follow.

therefore opens up a series of further considerations, especially in an administrative context increasingly characterized by the use of automated systems and the adoption of artificial intelligence in decision-making processes.

First of all, the centrality attributed to preventive control risks determining a rebalancing that is not always consistent with the modern evolution of public accountability systems.

If on the one hand preventive control has the (traditional) function of ensuring the formal legality of the act before it produces effects, on the other hand a highly digitized administrative system also seems to call into play *ex post* controls capable of evaluating the quality of processes, the reliability of algorithms, and the impact of automated systems on management results.

In this sense, an excessively rigid reading of preventive control risks bringing the Court of Auditors back to a formalistic and documentary conception of administrative activity, poorly suited to intercepting critical issues typical of digital action, such as algorithmic biases, defects in datasets, platform design errors, or deficiencies in AI system training phases.

Another critical profile concerns the possible deresponsabilization of administrators, who might implicitly consider even operational choices involving complex technological tools to be 'covered' by preventive control. If the act is validated *ex ante*, and if the reform aims to expand the hypotheses of exclusion of gross negligence, there is a risk of creating a paradox: greater reliance on the Court's control can lead to less attention in the intra-procedural phase, precisely the one where the crucial decisions regarding the selection, configuration, and supervision of AI tools take place.

These criticalities, certainly not irrelevant in the era of the Digital and Artificial State, therefore seem to highlight the need for the strengthening of preventive control to also evolve towards a more substantial model: not a mere review of formal legality, but a verification capable of considering also the regulatory compatibility of the technological solutions adopted, respect for European principles on the use of AI, and the consistency of automation with the constraints of the administrative procedure.

4.3. *Consultative Function, Administrative Responsibility and AI*

The Foti reform also introduces a new consultative function attributed to the Court of Auditors in matters of public accounting. The novelty consists in extending this competence over 'concrete cases' to both the Central Section for legality control and the Regional Sections, thus configuring a consultative system with widespread competence. The provision, following the path traced by Article 46 of the 2019-2020 European law, therefore foresees the possibility of rendering opinions on concrete cases also inherent to the implementation of the PNRR and the PNC (provided they have a total value of not less than one million euros).

This new consultative function features as an element of particular importance the exclusion of gross negligence for all acts adopted in compliance with the opinions rendered by the Court. Namely, an express cause exempting administrative liability, the operability of which is conditioned upon the prior acquisition and observance of the consultative opinion.

This results in a significant impact on the structure of financial liability, since the Court's opinion - although not formally binding - translates into reinforced protection for the acting administration, capable of circumscribing the scope of subsequent review on the mental element of the financial violation.

Added to this is that the reference to concrete cases and, even more so, to the PNRR and PNC, seems to also call into play particularly sensitive legal profiles related to the use of AI, such as algorithm transparency, personal data protection, non-discrimination, the proportionality of automated solutions, and the consistency between automation and procedural constraints.

The adoption of automated decision-making systems, in fact, involves a plurality of risks – from algorithmic bias to the opacity of decision-making processes, from the reliability of databases to the responsibilities deriving from errors in the programming or training of systems – that can hardly be intercepted through preventive legality control alone.

In this perspective, of particular relevance is then the circumstance that the legislator has provided an exemption from gross negligence for acts adopted in compliance with the

opinions rendered by the Court: this could in fact lead to incentivizing administrations to involve the Court of Auditors precisely in the most delicate steps of technological innovation, in order to mitigate the financial risk connected to the – by now mandatory – use of IT and automated tools.

At the same time, however, the attribution of such a significant exonerating effect requires critical reflection. The risk is that the consultative function is interpreted as a sort of 'preventive cover' even in areas where the administration should maintain an active and competent role in assessing the impact of AI. In other words, the Court's opinion should not turn into an instrument of de-responsibility, but into a qualified support that adds to – without replacing – internal technical and legal assessments.

In this regard, it is not irrelevant the legal provision that the cases subject to the opinions of the Court of Auditors do not fall among the acts subjected to preventive legality control, nor do they concern proceedings for which an invitation to submit defenses has already been notified by the competent accounting Prosecutor's Office. Which also highlights the risk of stratifications between different functions all vested in the Court of Auditors.

4.4. *An Initial Summary*

In the framework redesigned by the Foti reform, two directions emerge that profoundly affect administrative responsibility: on the one hand, the strengthening of preventive legality control; on the other, the introduction of the new consultative function, to which the legislator links an express exemption from gross negligence.

This assumes non-neutral consequences at a time of profound transformation of public administration, characterized by the increasingly widespread adoption of digital tools and artificial intelligence systems in decision-making processes.

Ultimately, in the digital and automated ecosystem in which public administration moves today, the need to build a bridge between technological innovation and legality, including financial legality, appears increasingly central, as a place to verify the compatibility of AI with the constitutional framework and with the principles of administrative procedure, and at the same time a safeguard aimed at ensuring that the digital transformation does not result in a retreat of protections.

Which means contributing to orienting the administration towards algorithmic design conforming to the principles of good administration, holding both technical and legal apparatuses responsible at the same time.

In this context, however, both the legality controls on acts and the new consultative function seem to be enriched with further implications that transcend the mere accounting dimension.

The result is a picture in which both figures – the exempting consultative opinion and the certification of legality – concur to build a zone of protection for the public agent, in which responsibility for gross negligence tends progressively to objectify itself and to depend on formal prerequisites, rather than on a rigorous assessment of the substantial diligence of the conduct.

In summary, all that remains is to thoughtfully await the developments of a reform oriented towards seeking new exemptions from gross negligence, capable of transforming the initial judgment on the diligence of the official's conduct into a current evaluation of the external and formalized circumstance of adherence to the opinion or the certification of legality of the Court of Auditors.

5. *Conclusions. The New System of Administrative Responsibility Tested by Algorithmic Administration: An Unresolved Paradox*

In light of the considerations made, it is possible to draw some concluding reflections. The increase in the computerization of decision-making processes has led to an (apparent) decrease in public tasks.

However, it has also generated an increase and differentiation in the cases leading to liability for financial damage, because there are many new hypotheses of possible prejudice caused to the administration by the damage, poor use or incorrect use of programs, machinery or tools whose operation is based on IT techniques.

Damages related to algorithmic data management (storage, interpretation, utilization) are also increasing and, even earlier, to the setup method of computer systems or the choice of suppliers of the technical supports necessary for the configuration of specific algorithmic systems

deemed necessary for the performance of some public tasks or, finally, to the administrative control chain to be ensured in the presence of non-legal elements of such magnitude.

To the paradox described above, the legislator has responded with another paradox. It has not intervened to regulate the individual cases of administrative liability related to financial damages generated to the administration by employees and officials operating with computer decision-making tools and techniques.

In this way, it would have more significantly eased the sense of fear that induces employees and officials to use the new tools required for the evolution towards algorithmic administration with extreme caution.

It has instead chosen to generally reform administrative liability, making the boundaries of culpability broader but even more uncertain. It has identified what it believed to be the sources of public employees' operational fear and sought a new balance between administrative efficiency and the guarantee of financial resources. By doing so, it has not removed the fears deriving from the new forms of liability in the event of algorithmic administration, but has contributed to aggravating them.

It allowed the uncertainty of public employees to condition the use of computer tools and techniques, triggering a second paradox.

The loosening of the rigid paradigm of administrative responsibility has lowered the level of guarantee for public resources but has also increased the fears in employees deriving from the risks connected to the computerization of the administration. We are therefore witnessing perverse outcomes that risk nullifying the purpose of the reform.

It is significant that, to overcome the severe crisis and restart the engine of the economy, the legislator deemed it necessary to enable public employees to operate without excessive/unjustified hesitation, and to overcome that administrative inertia (which would have been an obstacle to economic recovery), intervened precisely on the discipline of administrative responsibility.

The measure immediately aroused perplexity and was also subject to a constitutional review. The decision resolving the issue (judgment 16 July 2024, no. 132) is notable not only for having legitimized the choice made by the legislator in an emergency, in the particular context of the severe post-pandemic crisis, to address the mandatory need to ensure the implementation of the PNRR and the consequent resumption of a sustainable economic growth path, as well as overcoming some economic, social, and gender gaps,[26] but above all for the invitation addressed to the legislator by the Constitutional Judges for a structured reassessment of the system of administrative responsibility of public employees.[27]

This is precisely the profile we wish to emphasize, although the remarks advanced in the academic literature with reference to the exclusion of the sanctioning relevance of active gross negligence are well known, which ends up assimilating objectively grossly negligent conduct to behavior fully compliant with constitutional duties of discipline, honor, and correct fulfillment of public functions. Or the perplexities over the risk that an attenuation of the administrative management's responsibility, and that the possible indirect legitimization of conducts capable of compromising the integrity of public finances, enter into potential tension with the principles enshrined in Articles 81 and 97 of the Constitution. Or again the remarks about the systemic repercussions of the weakening of accounting jurisdictional control, especially with reference to anti-corruption prevention policies and finally the alerts regarding the risks of creating zones of substantial impunity, especially in cases of irregular management of resources of European origin, which the expansion of non-

[26] A. Ripepi, *La sentenza n. 132/2024 della Corte Costituzionale e la "fatica dell'amministrare": alcune proposte operative per un cambio di paradigma*, in *Rivista della Corte dei conti,* no. 2, 2025, 38–50.

[27] A. Ripepi, *La sentenza n. 132/2024 della Corte costituzionale,* cit., 39, notes that the Constitutional Court, in assessing the proportionality of the legislative intervention, emphasizes that the challenged provision stems from an exceptional context, is temporary in nature, and has a limited scope, concerning only acts of commission and not 'inactive' or 'omissive' conduct. Most importantly, the author highlights the invitation that the constitutional judge extends to policymakers to reconsider, from a systemic perspective, the administrative liability framework for public employees, suggesting 'the eventual search for new points of equilibrium in the allocation of risk between the administration and the public official, with the aim of making liability a reason for encouragement rather than a disincentive to action'.

punishable areas would be likely to favor.

Nevertheless, the issue of combating defensive bureaucracy re-emerged forcefully, a few years later, in the *ratio* of art. 2 of Legislative Decree no. 36/2023, finding explicit consecration also in the Illustrative Report of the new Public Contracts Code. This reference bears witness to the persistent need to rebalance the relationship between responsibility and the administration's decision-making capacity, in response to widely felt social needs. And therefore seek a balance between the dangers of overdeterrence and underdeterrence, a way to reach a reasonable risk allocation, so that this is not overwhelmingly burdened onto the community, as in the case of underdeterrence (which would overwhelmingly burden the risk onto the community, which would have to fully bear the damage caused by the public agent for macroscopically negligent behavior), nor fall into overdeterrence, which paralyzes administrative action.

The common thread that unites on one hand the push towards overdeterrence (and punitive drifts in the tightening of public employee responsibilities) and on the other hand the decisions of the Constitutional Court that have legitimized some recent legislative interventions and invited the legislator to a systematic rethinking of the liability system, is the theme of trust in the public employee.

It is evident that when the law intervenes it is because trust has now become an unbearable risk and therefore the law is indissolubly linked to an idea of suspicion and mistrust.[28] However, an excess of mistrust (and particularly towards the men and women working in the Public Administration) is translating into a regulatory system that leads to paralysis and inefficiency (when not to the mortification of the public employee's initiative up to the flight from public offices). Why not, therefore, rethink this approach and return to valuing trust (and some attempts can be glimpsed in the aforementioned contracts code), embark on a new path that allows - without prejudice to the prosecution of violations - valuing the spirit of initiative and the discretion of public administrators and keeps them safe from the high risk that accompanies their work.[29] In this perspective, trust should not be understood merely as a psychological aspect, but rather as the result of an effective multidisciplinary synergy. Public employees will be able to act with confidence and assurance when they are also aware that the tools they use have been calibrated to their activities and rendered legally compliant. As stated at the outset, this is made possible through the multidisciplinary training of all actors involved in this hybrid process, in which different competencies coexist. Such a context necessarily requires the development of a shared vocabulary among the various operators, so that overall action is oriented toward effective cooperation among all parties involved.

[28] M. Marzano, *Avere fiducia*, Segrate, Mondadori, 2012 and T. Greco, *La legge della fiducia. Alle radici del diritto*, Bari, Laterza, 2021.

[29] This is, for example, the direction indicated in the Report on the Articles and Annexes of the Final Draft of the Public Contracts Code, implementing Art. 1 of Law No. 78 of 21 June 2022, entitled 'Delega al Governo in materia di contratti pubblici'.